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DA 97-2149

## Federal Communications Commission

DISP

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments.  
FM Broadcast Stations.  
(Hayfield, Virginia))  
)  
) MM Docket No. 97-68  
) RM-8999  
)  
)  
)**REPORT AND ORDER**  
(Proceeding Terminated)

Adopted: September 24, 1997

Released: October 17, 1997

By the Chief, Allocations Branch:

1. At the request of Vixon Valley Broadcasting ("petitioner"), the Commission has before it the Notice of Proposed Rule Making, 12 FCC Rcd 2953 (1997), proposing the allotment of Channel 263A at Hayfield, Virginia, as the community's first local aural transmission service. Petitioner filed comments restating its interest in applying for Channel 263A if allotted to Hayfield. Mid Atlantic Network, Inc. ("Mid Atlantic"), licensee of Stations WINC(AM)/WINC-FM, Winchester, Virginia, filed comments and reply comments.

2. The Notice requested that petitioner furnish information to demonstrate that Hayfield has the social, economic, cultural indicia to qualify it as a community for allotment purposes and to show that these entities identify themselves with Hayfield. In response petitioner states that Hayfield has a post office, two churches, a cemetery and several retail businesses. It notes that the community also has a commercial quarry.

3. Mid Atlantic filed comments objecting to the requested allotment at Hayfield, arguing that Hayfield is devoid of any indicia that would qualify it as a community for allotment purposes. In support of its position, Mid Atlantic submits a letter from Mr. James L. Longerbeam ("Longerbeam"), Chairman of the Frederick County Board of Supervisors and a letter from Eric R. Lawrence ("Lawrence"), a Planner with the Frederick County Department of Planning and Development. Longerbeam states that Hayfield is the name of a crossroads and the County of Frederick does not consider this location a community. He further notes that at this intersection location is a small grocery store, which he believes has closed recently, a motel, an Assembly of God Church, and a few houses. Lawrence submits that Hayfield might be better referred to as an area of the County rather than a community. He states that Hayfield does not have its own local government and no public utility provisions for water and sewer. Mid Atlantic further submits an article from the Winchester Star newspaper dated March 1, 1997, reporting the closing of the Hayfield Contract (Postal) Station, noting that people who had mailboxes will

have the option of either getting a post office box at the Winchester or Gore Post Offices or constructing mailboxes at their homes for rural route mail delivery. Mid Atlantic argues that there is none of the indicia of community status present in Hayfield, stating that petitioner has failed to supply any showing indicating the presence of social or cultural organizations, municipal services or governmental units that identify themselves with Hayfield. On the contrary, Mid Atlantic submits the only indication of community status under the Commission's criteria provided by petitioner is the existence of a church, a cemetery, a quarry and an exit off of Highway 50.

4. Mid Atlantic also filed reply comments noting that petitioner did not submit the information necessary to demonstrate that Hayfield is a community for allotment purposes. It alleges that the only arguable indication of community status under the Commission's well established criteria is the Assembly of God Church and that petitioner failed to provide a showing indicating that the Church identifies itself with Hayfield or is intended to serve Hayfield as opposed to other areas, citing e.g., Ellison Bay, Wisconsin, 10 FCC Rcd 8082 (1995). Furthermore, Mid Atlantic notes that the only commercial establishment in the area is closing. Petitioner filed no reply comments.

5. In consideration of the information submitted in this proceeding, we are unable to find that Hayfield is a "community" for allotment purposes. Although the 1995 edition of the Rand McNally Commercial Atlas ("Atlas") lists Hayfield as having a population of 100 persons, the town is neither incorporated nor listed in the U.S. Census. In this regard, the Commission has stated that mere geographical location is not sufficient to establish "community status." See Vinville, Mississippi, 48 FR 5974 (1983), and Hannibal, Ohio, 6 FCC Rcd 2144 (1991). In addition, petitioner has not provided sufficient objective evidence indicating the existence of a community or any subjective evidence such as testimony of local residents indicating that they perceive themselves as belonging to a distinct geographical grouping. See Beacon Broadcasting, 2 FCC Rcd 3469 (1987), aff'd, 2 FCC Rcd 7562 (1987). While petitioner claims there are several businesses in Hayfield, it has not specifically identified these businesses or any other organizations which identify themselves with Hayfield or shown that these organizations are intended to serve the needs of the community, as opposed to other areas, as requested by the Notice. Indeed, it appears that the only retail business in the area, the Hayfield market, has closed. While in the past we have found places which are not incorporated or listed in the census to be communities for allotment purposes, Hayfield has none of the attributes associated with community status. See Kenansville, Florida, 5 FCC Rcd 2663 (1990), aff'd 10 FCC Rcd 9831 (1995). In Kenansville, evidence was provided demonstrating the existence of seven civic organizations and over 30 businesses which provided support for a finding that the residents of Kenansville conceived of themselves as a community. In this case, we believe that the record in this proceeding is insufficient to find that Hayfield is a community for allotment purposes. Therefore, we will not allot Channel 263A to Hayfield, Virginia.

6. In light of the above, IT IS ORDERED, that the petition for rule making filed by Vixon Valley Broadcasting (RM-8999), IS DENIED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau